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In The Supreme Court of the United States

October Term 1951

No. 678

MICHAEL LIVANOS, MICHAEL PAGONIS, PANAGIOTIS GRIGORIADIS, PANTELIS GIAKOUMIS, LAKARIAS VATOUGIOS, DIMITRIOS KYRIACOS, EVANGELOS LIASKOS, PANAGIOTIS SFEKAS, GEORGE TSAKONAS, MICHAEL KONDOUDIS AND VASSILIOS KOULOUBARITSIS,

Petitioners,

versus

GEORGE M. PATERAS, AS MASTER: GEORGE JOHN PATERAS AS MASTER: VASILIOS PATERAS AND VASILIOS PATERAS, GEORGE M. PATERAS AND GEORGE JOHN PATERAS, TRADING AS VISILIOS PATERAS AND BROTHERS, AS OWNERS: S. LIVANOS AND COMPANY, LIMITED: AND STAVROS LIVANOS, INDIVIDUALLY, TRADING, ETC. AS OPERATING AGENTS, ALL BEING INTERESTED IN THE OPERATION OF THE GREEK STEAMSHIP "DIRPHYS",

Respondents.

ON OPPOSITION TO PETITIONERS APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOURTH CIRCUIT

Hughes, Little & Seawell
(Thomas M. Johnston)
Proctors for Respondents

Norfolk, Virginia
April 21, 1952.

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BRIEF FOR RESPONDENTS

This petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit is filed by eleven

Greek seamen who seek to have this Court consider and reverse various findings of fact which have been determined adversely to the petitioners both in the District Court for the Eastern District of Virginia and in the United States Court of Appeals for the Fourth Circuit.

The issues of law involved have been fully dealt with by this Court on several occasions, and the Courts below have correctly applied and faithfully followed this Court's decisions in arriving at their conclusions in this case.

This Honorable Court has consistently refused to grant writs of certiorari in cases involving strikingly similar legal issues to the ones set forth in petitioners brief.

Maleuris et al v. *Papadakis et al*, 175 F. (2d) 730, Certiorari denied 338 U.S. 894, 70 S. Ct. 241

Emanuil Neapolidis et al v. *The Theofana Maritime Co., Ltd., et al*, 192 Va. 90, 63 S. E. (2d) 795, Certiorari denied 72 S. Ct. 36, 96 L. Ed. 34

NOTE: The parties hereto will sometimes be called "libellants" and "respondents", as they appeared in the Trial Court.

I. STATEMENT

This suit was originally instituted by eleven Greek seamen against the master, owners and operating agents of the Greek Steamship DIRPHYS. In the various libels and intervening libels filed in this case on July 13, September 18, and December 31, 1948, and January 18, 1951, these seamen claimed damages for false arrest, illnesses, illegal detention by Immigration Authorities and wrongful withholding of seamen's books, as well as indemnities

under Greek law for wrongful discharge, long service bonuses under Greek Collective Agreement, maintenance, repatriation, wages, overtime, extra pay, illegal advances, and waiting time under Title 46 U.S.C.A. Section 596 et seq. The total amount claimed by libellants was in excess of $125,000.00.

After numerous motions, discovery proceedings, pre-trial conferences and Court appearances extending over more than two years, this case was tried in the District Court on January 18, 19 and 22nd, 1951. (See original record on Appeal, pp. 1-263).

The District Court entered a decree on March 15, 1951 (App. 8, 9) making the following awards to the libellants:

(A) For illegal advances to the eleven libellants in February of 1948 at Newport News,	$2,217.00
(B) For damages to Liaskos by virtue of respondent's master's mistake in failing to include his name on vessel's crew list,	150.00
(C) For additional overtime due Liaskos	40.00
(D) For additional overtime due Pagonis	18.14

This decree denied recovery to the libellants on the numerous other claims asserted in the libels filed on their behalf. The awards made to these seamen were deposited in the registry of the District Court by the respondent and that Court's decree of March 15, 1951 paid over the full amount of the awards to the libellants.

From the decree of the District Court, the libellants appealed this cause to the United States Court of Appeals

for the Fourth Circuit where the case was argued on October 8, 1951, and decided November 5, 1951 (Appellate Court's Decision, App. 1). The Court of Appeals affirmed in every respect the decision of the District Court.

Petitioners sought a rehearing in the Court of Appeals which was denied. Upon the failure of the petitioners to obtain a stay of the enforcement of the Appellate Court's judgment, mandate was returned to the District Court affirming that Court's decree of March 15, 1951.

II. FACTS

All of the libellants were employed on the steamship DIRPHYS between February 7th and 11th, 1948, at Newport News, Virginia. The claims asserted by these eleven seamen are alleged to have arisen aboard the DIRPHYS on an extended voyage which began in Newport News, Virginia, in February, 1948, thence to various South American ports, thence through the Canal Zone and across the Atlantic to Rotterdam, and finally back to Newport News where the voyage ended in July of 1948 (App. p. 10).

While the vessel was in Rotterdam, Holland, Livanos, Grigoriadis, Vatougios, Giakoumis and Tsakonas were removed from the DIRPHYS by the Rotterdam Police acting in compliance with the orders of the Greek Consul and the Greek Port Master of that City. (Findings of Fact, App. p. 11; Dep. Pateras, App. p. 20). The accounts of these five libellants were promptly settled and all compensation then due and owing them was paid at Rotterdam. (Findings of Fact, App. p. 15). Immediately after the arrest and removal of these five men, the libellants

Pagonis, Kouloubaritsis and Kondoudis deserted the vessel. (Dep. Geo. J. Pateras, App. p. 24, 25; Findings of Fact, App. p. 15).

The other three libellants, Kyriakos, Liaskos and Sfekas remained aboard the vessel and rounded out the voyage, returning to Newport News, Virginia on or about July 13, 1948. (Dep. Geo. J. Pateras, App. p. 26).

On arrival in Newport News, the libellants Kyriakos and Sfekas complained of illness and were hospitalized where they received proper medical attention and were paid the wages and maintenance to which they were entitled. (Findings of Fact, App. p. 15; Dep. Chauncey, App. p. 45, 47, 48).

Liaskos, on arrival at Newport News, was detained for several days by Immigration Officials because of the respondents neglect to include his name on the DIRPHYS crew list, but the "error was promptly corrected." (Findings of Fact, App. p. 11; Testimony of Pateras, App. p. 32, 33).

All three of the libellants who returned to Newport News "freely terminated their employment upon completion of the voyage" (Findings of Fact, App. p. 11).

With the exception of two inadvertent clerical errors in computing the overtime of Liaskos ($40.00) and Pagonis ($18.14), the wage accounts of all libellants were settled promptly and punctually. (Findings of Fact, App. p. 14).

Advances totaling $2,217.00 were made to the libellants in Newport News, Virginia, in February of 1948; the District Court awarded the libellants these advances and the amount of the award was promptly paid to the libellants by the respondents. The money paid to libellants in Cristobal, Canal Zone, on May 31, 1948, had been earned. (Findings of Fact, App. p. 13).

III. ARGUMENT

A. The Petitioners Have Failed to Present Valid Reasons for Invoking the Jurisdiction of the Supreme Court of the United States.

The required statement disclosing the basis upon which it is contended that this Court should assume jurisdiction to review the judgments and decrees of the Court of Appeals and the District Court, with the exception of a reference to Title 28 U.S.C.A. Sec. 1254, is entirely lacking. (Petition for Writ, page 2).

The fact is, the petitioners seek a writ of certiorari because they object to the findings of fact of the Courts below. The various issues stated at pages 1-4 of the petitioners' brief have all been considered fully by both courts below and decided adversely to the libellants. The decisions of the lower courts are amply supported by the evidence.

This Court will not question the findings of fact of the District Court and the Court of Appeals unless they are clearly in error and are not supported by substantial evidence.

Mahnich v. Southern S.S. Co., 231 U. S. 96, 64 S. Ct. 455

Alabama Power Co. v. *Ickes*, 302 U. S. 464, 58 S. Ct. 300

Texas & N.O.R. Co., v. *Brotherhood etc.* 281 U. S. 548, 50 S. Ct. 427

The DEMOSTHENES (4 Cir.), 189 F. (2d) 488

Bradshaw v. The Virginia (4 Cir.), 176 F (2d) 526

The burden is on the petitioners to show error in the judgments of the Courts below.

Higgins v. *Carr Bros Co.* 317 U. S. 572, 62 S. Ct. 337

B. The Libellants Have Been Awarded and Paid All Illegal Advances Which They Received.

Under the District Court's decree of March 15, 1951, the libellants were awarded $2,217.00 for illegal advances made to them in Newport News, Virginia, in February of 1948, shortly after they joined the ship. (Findings of Fact, App. p. 12). These advances were paid into court by respondents and by the final decree were distributed to the libellants.

There were no illegal advances to the libellants in Cristobal, Canal Zone; the money paid to these seamen in that port had been earned.

Only four of the eleven libellants testified in this case concerning the money paid in Cristobal. Liaskos stated that after the advance in Newport News he got whatever money he had "worked for, not in advance", of the time when it was earned. (Dep. Liaskos, App. p. 58).

Sfekas testified that the payment which he received in the Canal Zone had been earned. (Dep. Sfekas, App. p. 59).

Giakoumis and Kyriakos stated that they received less money in Panama than was due them. (Dep. Giakoumis, App. p. 58; Dep. Kyriakos, App. p. 59).

Such admissions are conclusive against the party making them.

Massie v. *Parker* (6 Cir.), 128 F. (2d) 99
Mitchell v. *Swift & Co.* (5 Cir.), 151 F. (2d) 770
State Farm Mutual Auto Ins. Co. v. *Bonacci* (8 Cir.), 111 F. (2d) 412.

The case of *Crew* v. *Nelson* (1948), 188 Va. 108, 49 S. E. (2d) 326, at page 328, states the Virginia rule:

> "Where a litigant testifies unequivocally to facts within his knowledge and upon which his case turns, he is bound thereby and cannot rely upon other evidence in conflict with his own testimony to strengthen his case."

Moreover, the testimony of Captain Pateras bears out the testimony of these witnesses (Dep. Pateras, pp. 96-97):

> "Q. Now, how long had these various men been aboard when that ship was in Panama?
>
> A. About four months.
>
> Q. Was the money that was paid to each of these claimants a payment on wages that they would earn in the future or on wages that they had already earned?
>
> * * * * *
>
> A. That money was already earned because they had four months aboard."

The District Court disallowed any claim for advances in the Canal Zone (Memorandum, App. p. 13). The action of the Court in so doing is amply supported by the evidence.

C. The Libellants Are Not Entitled to Double Wages Under Title 46 U.S.C.A. Section 596 Et Seq.

The memorandum of the District Judge, which was

adopted as the Court's statement of its findings of fact and conclusion of law, dealt with the question of "waiting time" in the following language:

> "For the overtime and advances allowed by the Court there will be no additional allowance for "Waiting Time". 46 U.S.C.A. et seq. It cannot be said that any of this money was withheld without cause . . . ." (App. p. 14).

Proctors for the libellants contend that it was *mandatory* for the Trial Court to award waiting time in this case. It is submitted that such a contention wholly disregards the terms and meaning of the law.

> ". . . . Every master or owner who refuses or neglects to make payment in the manner hereinabove mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay. . . ." (46 U.S.C.A. 596).

In each case it must be determined *from the facts* whether the delay in the payment of wages is arbitrary, willful or unreasonable. (*McCrea v. United States* (1935), 294 U. S. 23, 55 S. Ct. 291.

Opposing proctors cite *Venides v. United Greek Shipowners Corp.* (2nd Cir.), 168 F. (2d) 681, and *Mavromatis v. United Greek Shipowners Corporation* (1st Cir.), 179 F. (2d) 310, as authority for the proposition that the libellants were entitled to an award for "waiting time" *as a matter of law.* Both of these cases dealt with awards of the statutory penalty for the unlawful deduction of compulsory savings from seamen's wages. In both of these cases, the deductions were made *with full knowledge of the fact that they had been held unlawful.* The decisions were predicated on the fact that the respondent, United Greek Shipowners Corp., had full knowl-

edge of the decisions of the Courts in *Glandzis v. Callinicos* (2nd Cir.), 140 F. (2d) 111 and *Lakos v. Saliaris* (4th Cir.), 116 F. (2d) 440.

In the instant case the illegal advances involved were made in February of 1948, long before litigation in the case of *Maleuris et al v. Papadakis et al.* (4th Cir.), 175 F. (2d) 730, had progressed to the stage where advances on future earning under such circumstances had conclusively been held to be unlawful and recoverable as wages.

Captain Pateras had no knowledge of the American law concerning advances on future earnings. (Pateras Dep., p. 257):

> "A. I do not know the American Law. That is for why I made the reductions. When the Court finds that they were right then they'll be paid their wages."

This deposition was taken in December of 1948. It was not until the following year that the Court decided that such advances were illegal. (*Maleuris et al v. Papadakis, et al*, supra).

It is both the Greek law and Greek custom to grant advances to Greek seamen when they are employed on Greek vessels. (Dep. Pateras, App. p. 40; Greek Collective Agreement of 1943, Sec. P.(1), Dep. C. N. Clinia, Exhibit "A").

"Sufficient cause" under the double pay statute need not amount to a valid legal defense to a claim for wages.

Collie v. Fergusson (1930), 281 U. S. 52, 50 S. Ct. 189.

Bender v. Waterman S/S Corp. (3rd Cir.), 166 F. (2d) 428.

Opposing proctors also argue that the failure of respondents to pay certain overtime due the libellants Liaskos ($40.00) and Pagonis ($18.14) constituted a withholding of wages "without cause". The Trial Court concluded that "The errors in the overtime calculations were apparently inadvertent clerical mistakes." (Memorandum opinion, App. p. 14).

The testimony of Captain Pateras clearly shows that the $40.00 error which he made in the Liaskos account was innocent and unintentional. It was a mistake about which even Liaskos himself did not complain when he settled his account. (Dep. Pateras, p. 261):

> "A. It may be a mistake. He was present when he received the money and accepted it.
>
> Q. Didn't he complain bitterly that you were doing him out of over 100 hours of overtime?
>
> A. No, he did not make any."

As to the mistake in the account of Pagonis, amounting to $18.14, Georgilis, Chief Engineer, testified as follows (Dep. Georgilis, p. 340):

> "A. I made a mistake; to add to his account four pounds and ten shillings because his account was made at sea and the captain called me and I made — I was in a hurry to make his account and forgot when Pagonis was not aboard the steamer.
>
> Q. When did you first discover that you made that mistake?
>
> A. Today."

Pagonis was one of the seamen who deserted the vessel in Rotterdam. He has never testified in this case.

The libels filed on behalf of Liaskos and Pagonis claim sums greatly in excess of the amounts awarded.

Liaskos' claim for overtime is in excess of $240.00. In addition both men claim numerous other items of wages, extra pay, bonuses, etc., under both Greek and American law. The respondents had a right to an adjudication of the claims made by these seamen. The fact that the Trial Court awarded only a small percentage of the amounts claimed testifies to the respondents' good faith in defending the case.

O'Hara v. Luckenbach S/S Co. (9th Cir.), 16 F. (2d) 681.

The petitioners' contention that there is a conflict of decisions of the United States Courts of Appeal for the Second and Fourth Circuits is not valid. The *facts* of each case are determinative of the question as to whether or not penalties will be allowed. The legal principle applied by the Courts is identical. The evidence in the instant case fully support the District Court's finding that the withholding was *not* without sufficient cause.

D. The Respondents Did Not Procure the Arrest of the 8 Libellants Who Left the Ship in Rotterdam.

The Trial Court concluded that Livanos, Grigoriadis, Giakoumis, Vatougios and Tsakonis were arrested on the order of the Greek authorities in Rotterdam, Holland; they were not accused of crimes, nor was their arrest procured by the respondents. (Memorandum Opinion App. p. 11).

This finding is abundantly supported by the evidence in this case. In the words of Captain Pateras "They were taken by the Greek Government after orders to the Greek Port Master of Rotterdam and the Greek Consul of Rotterdam." (Dep. Pateras, p. 15).

The Greek Consul boarded the DIRPHYS, held an investigation and then "called the Master and he told him to make their accounts and let them go off the steamer." (Dep. Pateras, p. 19). After these five men were notified by the Consul to leave the vessel their accounts were prepared by the master; the men refused to accept their accounts (App. p. 21, 22) and refused to leave the ship. (App. p. 23, 24). On orders of the Consul they were removed from the ship by the Rotterdam police. (App. p. 24). The accounts and seamen's books of these men were left with the ship's agents and Greek Consul. (App. p. 24).

The master's version of the Rotterdam incident is supported by the ship's log.

Of the five men who were removed from the vessel by Greek authorities, only one (Giakoumis) has testified in this case. His testimony concerning the Rotterdam incident is as follows (Dep. Giakoumis, p. 23):

"Q. There were five of you men who were ordered by the Greek Consul to leave the ship, isn't that correct?

A. Yes.

Q. And those men were Michael Livanos, Grigoriadis, Vatougious and you, Giakoumis, and Tsakonas?

A. Yes, sir.

* * * * *

Q. And after receiving his order, you went back aboard the ship, is that correct?

A. Yes, sir.

Q. When you got aboard the ship, the five of you told the master you weren't going to leave the ship, didn't you?

A. Yes.

Q. Now, you know the reason that the Greek Con-

sul told you to leave the steamship DIRPHYS, don't you?

A. I do not know anything absolutely."

These five libellants have failed to offer any competent evidence to substantiate their claim that respondents accused them of crimes and procured their arrest.

Pagonis, Kouloubaritis and Kondoudis left the vessel with the five seamen who had been removed by the Greek Consul. (App. p. 25). They left the ship knowing that she was ready to sail. (App. p. 25), and against the orders of the Master of the vessel. Under the circumstances they were guilty of deserting the vessel. (App. p. 15, 16).

(Dep. Gikoumis, p. 38):

"Q. Those three men weren't taken from the ship by the police? They came aboard (the launch) of their own accord?

* * * * *

A. Yes, the captain did not allow them to leave the boat.

Q. And they left anyway?

A. Yes, they come with us and all together we were put in jail."

The deserters did not ask for their accounts or their seamen's books. (App. p. 25, 26). The seamen's books were left with the police for delivery to Greek authorities (App. p. 26). Within several days the deserters' accounts were cabled to the Greek Consul at Rotterdam. (App. p. 27, 28).

Not one of the three libellants who deserted the vessel in Rotterdam have testified in this case. There is no competent evidence to substantiate their claim of false

arrest or unjustified discharge. Having thus failed to carry their burden of proof, their claims in this respect were properly denied.

Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 53 S. Ct. 391

Reliance Life Ins. Co. v. Burgess (8th Cir.), 112 F. (2d) 234.

Darden v. Murphy, 176 Va. 511, 11 S. E. (2d) 579.

E. All Wages to Which the Libellants Are Entitled Have Been Paid.

1. The five men removed by Consul.

As has been seen, the five seamen who left the vessel at Rotterdam on the orders of the Greek Consul refused to accept their money from the captain of the DIRPHYS. (App. p. 21, 22). Their accounts were delivered to the ship's agents and the Greek Consul (App. p. 24). Moreover, these men received their wages.

(Dep. Giakoumis, pp. 36, 37):

"Q. And you were paid off in front of the Greek Consul were you not, according to this account which was left (indicating libellants' Exhibit No. 1)?

A. They sent us that money in jail before the last minute we were going to leave.

Q. And you got that money that this account shows, didn't you?

A. They gave us this money in guilders, 18 pounds, 18 shillings in guilders."

Giakoumis was the only one of these five seamen who testified.

2. The Deserters.

The other three seamen, Pagonis, Kondoudis and Kouloubaritsis, who deserted the vessel at Rotterdam are not entitled to further payment of wages; they had been paid in the Canal Zone around June 5th and deserted the vessel on June 27, 1951. Their action in deserting the vessel forfeited the wages which they had earned. 46 U.S.C.A. 701.

Aside from the question of desertion, however, the evidence shows that Captain Pateras cabled the accounts of these men to the Consulate of Greece at Rotterdam (App. p. 27, 28). Not one of these three seamen have appeared to testify that they did not receive payment in accordance with these accounts.

3. The Three Men Who Returned to the U. S.

The wage accounts of Liaskos, Sfekas and Kyriakos were settled when the vessel returned to Newport News on July 13, 1948. (Accounts of Liaskos, App. p. 60; Sfekas, App. p. 62; and Kyriakos, App. p. 61).

Aside from the clerical errors in calculating overtime due Liaskos and Pagonis, dealt with above, the numerous other claims of the libellants for extra pay and overtime are not supported by the evidence. (Memorandum opinion, App. p. 13, 14):

> "No amount has been proved as due any of the libellants for extra work. Liaskos' claim for $0.35 per day for passengers carried has not been established.
>
> There is no sum due libellant Kyriakos for wages from Rotterdam to Newport News. The evidence fails to show the validity of any such claim."

It is submitted that the Court's conclusion in this respect is well founded. (Dep. Pateras, App. p. 29).

F. The Libellants Are Not Entitled to Indemnities or Bonuses Under Greek Law.

The numerous claims of these eleven seamen for indemnities for wrongful discharge are totally unsupported by the evidence. Their separation from the DIRPHYS was of their own making.

The indemnities under Article 361 of the Greek Commercial Code and the Greek Collective Agreement (i.e., 4 months wages, etc.) are payable only when seamen are discharged "without justifiable cause."

Mavromatis v. United Greek Shipowners Corp., (1st Cir.), 179 F. (2d) 310.

The respondents did not discharge any of these seamen. The eight of them who left the DIRPHYS at Rotterdam have been previously dealt with. All three of the seamen who returned to Newport News left the DIRPHYS voluntarily. Kvriakos and Sfekas were not summarily discharged – they were hospitalized. (Paragraphs 2, 9, 13, Memorandum Opinion, App. p. 15).

(Deposition of Sfekas, p. 81):

"A. I left the ship at Norfolk on the 13th of last month, (July), because of illness."

(Deposition of Liaskos, p. 26):

"Q. You asked the captain to pay you off that steamer, didn't you?

A. Yes."

The long service bonus claimed by the libellants under the Greek Collective Agreement was discontinued in November of 1947, over two months *before these seamen even went aboard the DIRPHYS.* (Dep. C. N. Clinia, App. p. 74; Resp. Exhibit "B" Jan. 18, 1949; Paragraph 8, Memorandum Opinion, App. p. 28).

The three libellants who returned to the United States did not request repatriation. (Paragraph 10, Memorandum Opinion, App. p. 28). Deposition of Liaskos, pp. 33, 34:

> "Q. I ask you whether you would accept passage back to Greece in the form of a ticket?
>
> * * * * *
>
> A. Why do you give it to me?
>
> Q. I ask you the question. You're to answer, not to ask questions.
>
> A. No."

G. Respondents Furnished Kyriakos and Sfekas with Maintenance and Cure.

1. KYRIAKOS

The Trial Court found that Kyriakos was properly hospitalized. "His medical attention and hospitalization were paid for by his employer and he was paid in full all maintenance to which he was entitled." (Memorandum opinion, paragraph 2, App. p. 11).

Respondents witness W. B. Chauncey was heard at the trial of the case. He testified that Kyriakos was hospitalized, paid his base wage while in the hospital and paid full maintenance when he was released from the hospital. (App. p. 45). In fact the seaman signed a receipt for these payments. (App. p. 44, 45).

2. SFEKAS

The District Judge also concluded that Sfekas was hospitalized and his maintenance paid. (Memorandum Opinion, paragraph 13, App. p. 15).

Sfekas was hospitalized on two separate occasions. On July 23, 1948 competent physicians found no further hospitalization needed. (App. p. 47, 50). Testimony of W. B. Chauncey, p. 40:

> "Q. As a result of that hospitalization in Newport News in the Buxton Hospital, what, if anything, was paid Sfekas for the time he was in there?
>
> A. He stayed in the hospital nine days, and I paid him $21.60.
>
> * * * * *
>
> Q. What was the payment that was made to him after his discharge from the hospital?
>
> A. I gave him $21.60 as his base pay, plus $5.00 for transportation to Newport News the day that he came over.
>
> Q. When was he discharged from the Buxton Hospital?
>
> A. The 23rd of July, 1948."

This seaman had no period of disability following this hospitalization. He signed receipts for the amount paid to him. (App. p. 47). Subsequently on August 10, 1948, Sfekas was again hospitalized at respondents expense after obtaining certificates from Baltimore physicians to the effect that he needed an appendix operation. (App. pp. 47). He received his base pay while in the hospital. (App. p. 47).

Proctors argue that Sfekas has not been paid 21 days maintenance after the second discharge from the hospital, on August 26, 1948. Aside from the question of respon-

dents legal obligation to pay such maintenance after having a proper medical discharge from the Newport News hospital in July of 1948, there is no conclusive evidence that the maintenance in question was not paid. *Sfekas himself did not testify on the point.* It is just as reasonable to assume that he received payment from the New York Agents of the DIRPHYS as it is to assume that his maintenance was not paid. In the case of *Pennsylvania R. Co. v. Chamberlain* (1933), 288 U. S. 333, 339, 53 S. Ct. 391, 393, it is stated:

> "We, therefore, have a case belonging to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover."

The Trial Court properly concluded that Sfekas was not entitled to further payments for maintenance.

The amounts paid during hospitalization were the base wages of the two men; this is in accordance with the provisions of the Greek Collective Agreement. (Paragraphs A and N(2), Greek Collective Agreement of 1943: Res. Exhibit A of Jan. 18, 1949).

IV. CONCLUSION

The respondents submit that the decisions of the United States Court of Appeals for the 4th Circuit and the United States District Court for the Eastern District of Virginia are eminently correct. The many and varied claims asserted by the petitioners were based on questions of fact which the Courts below resolved in favor

of the respondents; the decisions of the Courts below are based on ample and substantial evidence.

There is no real conflict of authority as to the basic points involved, no new or novel questions needing further clarification and no question of general interest warranting the granting of a writ of certiorari in accordance with the petitioners' application.

For these reasons the decrees of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of Virginia, should not be disturbed and a writ of certiorari should be denied.

Respectfully submitted

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